

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ZHEN GUANG LIU,

Plaintiff,

v.

DA DI CHINESE FOOD, INC. d/b/a KIM FAI
CHINESE FOOD and YAN LI,

Defendants.

MEMORANDUM & ORDER
16-CV-937 (MKB) (ST)

MARGO K. BRODIE, United States District Judge:

Plaintiff Zhen Guang Liu commenced this action against Defendants Da Di Chinese Food, Inc. (“Da Di”), his former employer, Yan Li (“Li”), the owner of Da Di, Siu Ying Chen, John Li, Pun Chan, and John and Jane Does 1-10, on February 24, 2016, alleging overtime and reimbursement violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), as well as overtime, spread-of-hours, wage notice and pay stub violations of the New York Labor Law, §§ 190 *et seq.* & 650 *et seq.* (“NYLL”), and deceptive practice violations of New York General Business Law § 349. (Compl. ¶¶ 55–86, Docket Entry No. 1.) Plaintiff filed an Amended Complaint on January 13, 2017, asserting the same causes of action only against Defendants Da Di and Yan Li. (Am. Compl., Docket Entry No. 28.) Defendants moved for summary judgment on August 11, 2017. (Defs. Mot. for Summ. J. (“Defs. Mot.”), Docket Entry No. 43; Defs. Mem. of Law in Supp. of Defs. Mot. (“Defs. Mem.”), Docket Entry No. 44.)

The Court referred the motion for summary judgment to Magistrate Judge Steven Tiscione on October 5, 2017 for report and recommendation. (Minute Entry dated Oct. 5, 2017.) By report and recommendation dated February 6, 2018 (“R&R”), Judge Tiscione recommended

that the Court grant Defendants' motion for summary judgment. (R&R 1–2, Docket Entry No. 54.) No party has objected to the R&R.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's report and recommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, the Court adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). The Court grants Defendants' motion for summary judgment and dismisses the Amended Complaint in its entirety. The Clerk of Court is directed to close this case.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: February 21, 2018
Brooklyn, New York